**IN THE HIGH COURT OF JUDICATURE OF BOMBAY**

**CIVIL APPELLATE JURISDICTION**

CONTEMPT PETITION NO.250 OF 2006
WITH
CIVIL APPLICATION NO.6 OF 2007

Shri Dnyanesh S. Shah. ..Petitioner.

V/s.

The Commissioner,
Malegaon Municipal Corpn. & Ors...Respondents.

Mr.Niranjan P. Shimpi for petitioner.

Mr.C.J.Sawant, Sr.Counsel for S.M.Sabrat for respondent Nos. 1 and 2.

Mr.D.A.Patil, AGP for respondent No.3.

**CORAM: A.M.KHANWILKAR,J**

**DATE : JANUARY 22, 2007.**

**P.C. :**

1. Heard Counsel for the parties.

2. The grievance in this petition is that inspite of the order of the Division Bench of this Court dated 24th November, 2005 to consider the application of the petitioner for development without taking into account the fact that land was shown as reserved in the draft development plan, the authority has rejected the application preferred by the petitioner on 30th May, 2006. While doing so, the authority has observed that the suit property comes

within the green belt on account of flood line, for which reason the request for development of the plot cannot be considered. This, according to the petitioner is willful disobedience of the order of this Court. It is not possible to countenance this grievance. For, the issue regarding the suit property coming within the flood line was specifically agitated before this Court, but the Court declined to go into that issue- as it was a disputed question of fact, as can be discerned from the observation in paragraph-7 of the order of the Division Bench dated 24th November, 2005.

3. In that sense, the sweep of the observations of the Division Bench in paragraph-8(a), was that the authority was obliged to ignore the reservation shown against the suit land in the draft development plan; which however, did not take within its fold other matters, such as suit plot being green belt on account of flood line. In other words, that ground was available to the authority while considering the subject application. Thus understood, it is not a case of willful disobedience of the order of the Court.

4. The ground now invoked by the authority

whether is tenable, is a matter which will have to be agitated by the petitioner appropriate proceedings. That issue cannot be gone into in Contempt action. In other words, it will be open to the petitioner to pursue appropriate remedy against the decision of the authority incorporated in the communication dated 30th May, 2006, which proceeding will have to be decided on its own merits in accordance with the law. All questions in that behalf are left open.

5. This petition is disposed of on the above observations. Notice issued to respondents stands discharged.

6. In view of this order, nothing survives in the civil application. The same is disposed of accordingly.